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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,675	05/25/2000	Martin G. Kienzle	YOR9-2000-0138US1 590.010	7179
35195 7590 05/15/2008 FERENCE & ASSOCIATES LLC 409 BROAD STREET PITTSBURGH, PA 15143				
EXAMINER USTARIS, JOSEPH G				
ART UNIT 2623		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/578,675

## Applicant(s)

KIENZLE ET AL.

## Examiner

JOSEPH G. USTARIS

## Art Unit

2623

**Period for Reply**  
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-15,17,18 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-15,17,18 and 20-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/3508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 17, 2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 3, 4, 6-15, 17, 18, and 20-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 4, 6-12, 15, 17, 18, 20-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neel et al. (US005838314A) in view of Russo (US005619247A) and Hjelsvold et al. (US006546555B1).

Regarding claim 1, Neel et al. (Neel) discloses an apparatus for regulating the presentation of electronic media content to a consumer (See Fig. 1, the digital video service system with interactive advertisements). The system includes an interface arrangement (e.g. video server) which receives media content (e.g. video programs and advertisements) comprising a plurality of segments (e.g. video programs and advertisements) (See Fig. 1 and column 4 lines 20-25), wherein each segment includes cost factor data associated therewith (e.g. the movie "Little Women" is a debit bearing media that costs \$4.95 and a fifteen minute advertisements is a credit bearing media that is worth \$4.95) (See Fig. 7a). The system examines the cost factor data and attributes credit values to the plurality of segments based on the cost factor data (e.g. the system notifies the consumer that "Little Women" costs \$4.95 or can viewed for free by watching a fifteen minute advertisement) (See Figs. 7a-7b; column 4 lines 30-60), wherein the system control computer would assign and notify the user of a fee or also known as "negative credit value" to view a video program or "debit-bearing content" (See Neel Fig. 7a). Also, the user is able to view an interactive advertisement or "credit-bearing content," where if the user completes viewing the advertisement then the video program would be free or "positive credit value" for the user to enjoy (See Neel Fig. 7a and column 4 lines 50-60). Neel also discloses that the system control computer offers the user an option for the user to view an advertisement, which would make the video program free to the user or "adjust the attributed credit value of the received media content based on the cost factor data (e.g. cost of program)" (See Neel Fig. 7a).

Furthermore, the system control computer and the video server together function as a regulator (See Fig. 1).

However, Neel does not disclose maintaining a credit balance associated with the consumer based on the attributed values, to use the balance in the account to determine the rules for future behavior of content presentation, that the regulator applies rules for presenting the media content based on the credit balance, and adjusting the attributed credit value of the received media content based on at least one additional predetermined criterion external to the received media content.

Russo discloses a stored program pay-per-play system. The system maintains a credit balance for the consumer based on the attributed values (e.g. the system adjusts the balance based on cost of the programs viewed by the consumer) (See column 6 lines 9-33 and column 10 lines 23-38). The system also uses the balance in the account to determine the rules for future behavior of content presentation (e.g. system would provide codes that prevent any future attempts to decompressed or de-scrambled programs when the consumer has used up their credits) (See column 10 lines 39-48). Furthermore, the system applies rules for presenting the media content based on the credit balance (e.g. system would block programs from being decompressed or de-scrambled based on the codes) (See column 10 lines 39-48). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the system control computer and video server disclosed by Neel to maintain a credit balance associated with the consumer based on the attributed values, to use the balance in the account to determine the rules for future behavior of content

presentation, and that the regulator applies rules for presenting the media content based on the credit balance, as taught by Russo, in order to expand the capabilities of the system thereby providing more convenience for the consumer when the consumer wishes to view the media content.

Hjelsvold et al. (Hjelsvold) discloses a system for regulating presentation of electronic media. Hjelsvold discloses that the system adjusts the attributed credit value (e.g. price/value) of the received media content (e.g. video) based on at least one additional predetermined criterion external to the received media content (e.g. the time varying price function) (See col. 13 lines 46-61). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system disclose by Neel to adjust the attributed credit value of the received media content based on at least one additional predetermined criterion external to the received media content, as taught by Hjelsvold, in order to allow the system to sell services at different price levels (See col. 1 lines 41-50). Furthermore, based on the teaching from Hjelsvold, the system can adjust the attributed credit value of video programs (e.g. the price the viewer will be charged) and the attributed credit value of advertisements (e.g. the value the advertisements are worth) based on the time varying price function.

Regarding claim 3, Russo discloses that the system maintains credit information of the user, wherein the credit information contains the amount of credit or "balance" or history of credit abuse or "credit rating" (See Russo column 10 lines 25-45). The system would block programs from being decompressed or de-scrambled based on the credit

information or "control the presentation of...media input...based on credit rating" (See Russo column 10 lines 40-50).

Regarding claim 4, the credit information contains a credit limit or "credit threshold value", where if the credit is used up the video programs or "debit-bearing content" are not decompressed or de-scrambled (See claim 3).

Regarding claim 6, the system monitors the video programs and advertisements to verify if they have been viewed and adjusts the credit information accordingly (See Russo column 5 lines 10-35 and Neel column 5 lines 30-40).

Regarding claim 7, the system would charge the account or "subtract from credit balance" if the users view a video program or "debit-bearing content" and allow free viewing of the movie or "add to the credit balance" if an advertisement or "credit-bearing content" was viewed (See Russo column 5 lines 10-35 and Neel Fig. 7a and column 4 lines 50-60).

Regarding claim 8, the video programs stored within the video server include movies or "pre-recorded media content" (See Neel column 4 lines 20-25). Furthermore, the video server has a decoder (See Neel column 10 lines 40-45) and based on the credit information, which contains the "balance", prevents de-scrambling or decoding if there is not enough credit or "decoding...pre-recorded media content...based on the credit balance" (See Russo column 10 lines 40-50).

Regarding claim 9, wherein said at least one additional predetermined criterion external to the received media content comprises a time-dependent factor (e.g. time varying price function), wherein said time-dependent factor decreases a debit value

(e.g. price/value) of the received media content (e.g. video programs/advertisements) upon passage of time (e.g. age) (See Hjelsvold col. 13 lines 46-61, the relative part of the time varying price function).

Regarding claim 10, the video programs and interactive advertisements are viewed on a television or "presentation medium" (See Neel Fig. 1 element 122).

Regarding claim 11, the video server stores video programs and interactive advertisements or "a television commercial and...a portion of television show" (See Neel column 4 lines 10-30).

Regarding claim 12, Russo discloses that the record/play controller or "video server" and cable box or "system control computer" is implemented as a single unit, for instance a cable converter box or "set-top cable TV converter box" (See Russo column 3 lines 60-67).

Claim 15 contains the limitations of claim 1 (wherein the system performs the method) and is analyzed as previously discussed with respect to that claim.

Claim 17 contains the limitations of claims 3 and 15 and is analyzed as previously discussed with respect to those claims.

Claim 18 contains the limitations of claims 4 and 17 and is analyzed as previously discussed with respect to those claims.

Claim 20 contains the limitations of claims 6 and 15 and is analyzed as previously discussed with respect to those claims.

Claim 21 contains the limitations of claims 7 and 20 and is analyzed as previously discussed with respect to those claims.



Claim 22 contains the limitations of claims 8 and 20 and is analyzed as previously discussed with respect to those claims.

Claim 23 contains the limitations of claims 9 and 20 and is analyzed as previously discussed with respect to those claims.

Claim 24 contains the limitations of claims 10 and 15 and is analyzed as previously discussed with respect to those claims.

Claim 25 contains the limitations of claims 11 and 24 and is analyzed as previously discussed with respect to those claims.

Regarding claim 28, Official Notice is taken that it is well known to embody instructions in software for computer control. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to embody the method previously discussed in claims 1 and 15, which is disclosed by Neel in view of Russo and Hjelsvold, as instructions in software in order to automate the hardware process within any computer-based machine.

5. Claims 13, 14, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neel et al. (US005838314A) in view of Russo (US005619247A) and Hjelsvold et al. (US006546555B1) as applied to claims 1 and 15 above, and further in view of Hunter (US20030133692A1).

Regarding claim 13, Neel in view of Russo and Hjelsvold does not disclose a feature where the presentation medium is a computer monitor.

Hunter discloses a video distribution system where the video display device or "presentation medium" is a computer monitor (See paragraph 0109). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the system disclosed by Neel in view of Russo and Hjelsvold to display the contents of the video server and system control computer on a computer monitor, as taught by Hunter, in order to expand the functions of the system to other devices thus targeting a wider range of consumers.

Regarding claim 14, Hunter discloses that media may come from an Internet connection where inherently the media received is "internet multimedia content" (See Hunter paragraph 0080).

Claim 26 contains the limitations of claims 13 and 15 and is analyzed as previously discussed with respect to those claims.

Claim 27 contains the limitations of claims 14 and 26 and is analyzed as previously discussed with respect to those claims.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH G. USTARIS whose telephone number is (571)272-7383. The examiner can normally be reached on M-F 7:30-5 PM; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph G Ustaris/  
Primary Examiner, Art Unit 2623